

# Immigration: Diversity Visa Lottery

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## Summary

The diversity visa lottery offers an opportunity for immigration to nationals of countries that do not have high levels of immigration. Aliens from eligible countries had until noon on December 30, 2003 to submit their applications for the FY2005 diversity visa lottery. Aliens who are selected through the lottery, if they are otherwise admissible under the Immigration and Nationality Act (INA), may become legal permanent residents of the United States. Participation in the diversity visa lottery is limited annually to 55,000 aliens from countries that are under-represented among recent immigrant admissions to the United States. In FY2001, over 8 million aliens from around the world sent in applications for the FY2003 lottery. Of the diversity visas awarded in FY2002, European immigrants comprised 39.4% of the diversity visa recipients and African immigrants received 38.1%. This report does not track legislation and will not be regularly updated.

## Background

The purpose of the diversity visa lottery is, as the name suggests, to encourage legal immigration from countries other than the major sending countries of current immigration to the United States. The law weighs allocation of immigrant visas heavily towards aliens with close family in the United States and, to a lesser extent, aliens who meet particular employment needs. The diversity immigrant category was added to the Immigration and Nationality Act (INA) by the Immigration Act of 1990 (P.L. 101-649) to stimulate “new seed” immigration (i.e., to foster new, more varied, migration from other parts of the world).<sup>1</sup> The current diversity lottery began in FY1995 following three transitional years with temporary lotteries.<sup>2</sup>

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<sup>1</sup> §203(c) of INA.

<sup>2</sup> From FY1992 to FY1994, the State Department conducted a lottery for 40,000 immigrant visas that were available to natives of countries that have been “adversely affected” by the 1965 (continued...)

The diversity lottery makes 55,000 visas available annually to natives of countries from which immigrant admissions were lower than a total of 50,000 over the preceding five years. The United States Citizenship and Immigration Services Bureau (USCIS) generates the formula for allocating visas according to the statutory specifications: visas are divided among six geographic regions according to the relative populations of the regions, with their allocation weighted in favor of countries in regions that were under-represented among immigrant admissions to the United States. The Act limits each country to 7%, or 3,850, of the visa limit, and provides that Northern Ireland be treated as a separate foreign state. Recipients of the visas become legal permanent residents (LPRs) of the United States.

While the diversity lottery has not been directly amended since its enactment in 1990, the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA) temporarily reduces the 55,000 annual ceiling by up to 5,000 visas annually. Beginning in FY1999, the diversity ceiling became 50,000 to offset immigrant visa numbers made available to certain unsuccessful asylum seekers from El Salvador, Guatemala, and formerly communist countries in Europe who are being granted LPR status under special rules established by NACARA. While the offset is temporary, it is not clear how many years it will be in effect to handle these adjustments of status.

### **Trends in Admission**

In FY2002, there were 42,829 persons actually admitted or adjusted as LPRs with diversity visas, according to the FY2002 USCIS admissions data. This number represents 4% of all LPRs in FY2002 and is comparable to FY2001, when 42,105 diversity immigrants comprised 3.9% of all LPRs. The top five countries in FY2002 (the latest year for which detailed data are available) were Albania, Ethiopia, Nigeria, Poland, and the Ukraine.

As **Table 1** details, these five countries have consistently ranked among the top diversity visa sending countries, along with Bangladesh, Bulgaria, Morocco, Romania, and Russia. Citizens of Ireland, Poland, and the former Soviet Union won the most visas in the mid-1990s, but their participation in the lottery has fallen in recent years. Albania ranks as the top sending country for this entire period, followed by Nigeria. The numbers for Russia and Ukraine may be understated because nationals who qualified from some of the post-Soviet nations reported that they were born in the Soviet Union.

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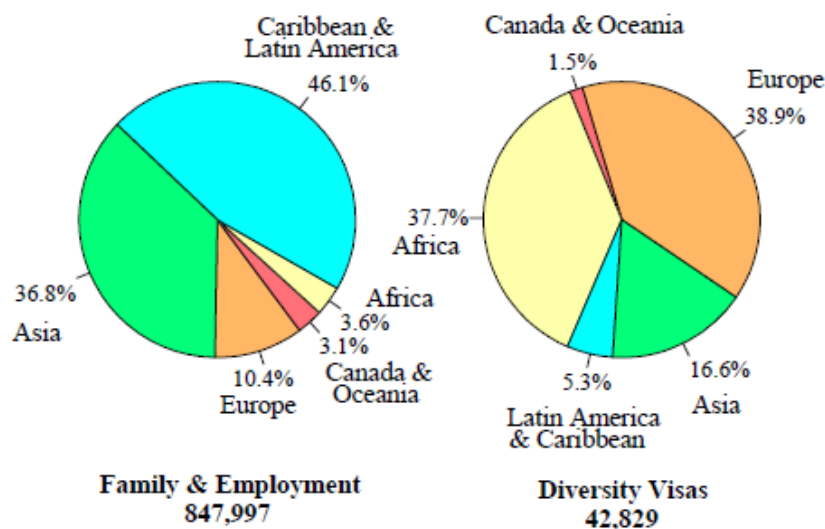
<sup>2</sup> (...continued)

amendments to the INA that ended the country quota system. According to §132 of the 1990 Act, 40% (16,000) of these “transitional” diversity visas each year were earmarked for natives of Ireland.

**Table 1. Top Diversity Visa Sending Countries, FY1997-FY2002**

Country of birth	FY1997	FY1998	FY1999	FY2000	FY2001	FY2002	Total	Rank
Albania	3,474	3,404	3,117	3,909	3,295	2,566	19,765	1
Bangladesh	3,080	2,835	1,697	1,720	1,509	1,106	11,947	7
Bulgaria	1,843	2,925	3,390	3,660	2,611	1,809	16,238	4
Egypt	1,652	1,786	1,536	1,506	1,125	1,161	8,766	12
Ethiopia	2,881	2,090	2,191	1,778	2,194	3,994	15,128	5
Ghana	2,375	2,156	1,734	1,737	1,122	1,217	10,341	11
Morocco	1,093	1,216	1,940	2,066	3,083	1,494	10,892	8
Nigeria	2,605	3,185	3,118	2,822	2,688	2,279	16,697	2
Pakistan	1,297	1,229	1,693	1,759	1,533	1,081	8,592	13
Poland	3,418	391	36	24	22	2,486	3,891	14
Romania	2,378	2,621	2,866	2,869	1,953	981	13,668	6
Russia	1,747	1,506	1,930	2,459	1,555	1,180	10,377	10
Soviet Union (fmr)	5,359	5,067	40	42	30	39	10,577	9
Ukraine	1,660	2,095	3,093	3,970	2,749	3,028	16,595	3

Source: CRS analysis of USCIS admissions data, reported by DHS Office of Immigration Statistics.

**Figure 1. Sending Regions of the World in FY2002: Diversity Visas Compared with Family and Employment Visas**

Source: CRS analysis of DHS Office of Immigration Statistics data.

The sending world regions for diversity visas, as intended, differ substantially from the sending regions for family-based and employment-based immigration. As **Figure 1** illustrates, European immigrants comprised 39.4% of the diversity visa recipients in contrast to 10.4% of the family-based and employment-based immigrants in FY2002. African immigrants received 38.1% of the diversity visas in contrast to 3.6% of the family-based and employment-based visas. Caribbean, Latin American, and Asian immigrants dominated family-based and employment-based immigration, and as a result, made up much smaller percentages of the diversity visa immigrants.<sup>3</sup>

## Eligibility

To be eligible for a diversity visa, the INA requires that an alien must have a high school education or the equivalent, or two years experience in an occupation which requires at least two years of training or experience.<sup>4</sup> The alien or the alien's spouse must be a native of one of the countries listed as a foreign state qualified for the diversity visa lottery.

Diversity lottery winners, like all other aliens wishing to come to the United States, must undergo reviews performed by Department of State consular officers abroad and DHS inspectors upon entry to the U.S.<sup>5</sup> These reviews are intended to ensure that they are not ineligible for visas or admission under the grounds for inadmissibility spelled out in the INA.<sup>6</sup> These criteria for exclusion are grouped into the following categories:

- health-related grounds;
- criminal history;
- security and terrorist concerns;
- public charge (e.g., indigence);
- seeking to work without proper labor certification;
- illegal entrants and immigration law violations;
- ineligible for citizenship; and,
- aliens previously removed.

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<sup>3</sup> For background and analysis of family-based and employment-based immigration, see CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

<sup>4</sup> It appears that a General Educational Development certificate (GED) or its foreign equivalent may not satisfy this requirement. See American Immigration Lawyers Association, Practice Pointer, *Immigration Nationality Law Handbook 2001-02 Edition*, vol. 1, p. 174.

<sup>5</sup> For background and analysis of visa issuance policy, see CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, by Ruth Ellen Wasem.

<sup>6</sup> §212(a) of INA.

## FY2005 Lottery

The State Department announced the FY2005 lottery on August 19, 2003. The 60-day application period began on November 1, 2003 and ended on December 30, 2003.<sup>7</sup> For the first time, applications for the diversity lottery must have been submitted electronically. Entrants received an electronic confirmation notice upon receipt of a completed entry form. Paper forms were not accepted. Since the objective of the diversity lottery is to encourage immigration from regions with lower immigration rates, natives of countries with high admissions are usually ineligible. For FY2005, the ineligible countries were: Canada, China (mainland born), Columbia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, the Philippines, Russia, South Korea, the United Kingdom and dependent territories, and Vietnam.<sup>8</sup>

When applying for a diversity visa, petitioners had to follow the instructions issued by the State Department precisely. If there were any mistakes or inconsistencies with the petition, it may have been disqualified by the State Department. In the FY2003 lottery, over 2 million of the 8.7 million applications were disqualified for failure to comply with the instructions.<sup>9</sup> Aliens who submit more than one application are supposed to be disqualified, but husbands and wives may submit separate entries even though spouses and unmarried children under the age of 21 qualify as derivative beneficiaries of successful applicants. Any derivative beneficiary must be listed on the petition when it is initially filed, and the derivative beneficiary visas are counted against the 50,000 visa cap. If a diversity lottery winner dies before obtaining LPR status, the visa is automatically revoked and derivative beneficiaries are no longer entitled to diversity visa classification.<sup>10</sup>

Once all acceptable applications were received by the visa center, the winners were selected randomly by computer. Petitioners who were not selected were not notified by the State Department. The State Department is expected to notify the winners of the FY2005 diversity lottery by mail between May and July 2004, and their visas will be issued between October 1, 2004 and September 30, 2005. Winning the first round of the FY2005 lottery does not guarantee a visa, because the State Department draws more applications than the number of visas available. Therefore, winners must be prepared to act quickly to file the necessary documentation demonstrating to the State Department that they are admissible as LPRs. The applications are processed on a first-come, first-served basis. Aliens must complete this process before September 30, 2005 to receive visas.<sup>11</sup> In person interviews are expected to begin in October 2004.

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<sup>7</sup> For detailed information on the diversity visa application process, go to the State Department website at [<http://travel.state.gov/dv2005.html>].

<sup>8</sup> Summary of State Department information. For detailed information go to the State Department website at [<http://travel.state.gov/dv2005.html>].

<sup>9</sup> American Immigration Lawyers Association, *Immigration Nationality Law Handbook 2003-04 Edition*, vol. 1, p.351.

<sup>10</sup> 9 FAM 42.33 Note 5.2-2.

<sup>11</sup> For background on immigration policy, see CRS Report RS20916, *Immigration and Naturalization Fundamentals*, by Ruth Ellen Wasem.

## Issues

Some question the continuation of the diversity visa lottery, given that family members often wait years for a visa to immigrate to the United States. They state a preference that the 55,000 visas be used for backlog reduction of the other visa categories. Supporters of the diversity visa, however, point to the immigration dominance of nationals from a handful of countries and argue that the diversity visa provides “new seed” immigrants for an immigration system weighted disproportionately to family-based immigrants.

Some are arguing that the INA should be amended to prevent nationals from countries that the United States identifies as sponsors of terrorism from participating in the diversity visa lottery. These critics maintain that the difficulties of performing background checks in these countries as well as broader concerns about terrorism should prompt this change. Supporters of current law observe that LPRs coming to the United States in other visa categories are not restricted if they come from nations that sponsor terrorism and argue that the policy should be uniformly applied.

Who should bear the costs of operating the lottery has also arisen as an issue. Those aliens who win the lottery pay a fee with their visa application, but some argue that a fee should be charged to enter the lottery as well. The diversity visa has been criticized as vulnerable to fraud and misuse, but the State Department maintains that they are addressing these concerns.

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